

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 22329 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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PYRAMID ENGINEERS THRO.PARTNERS-NIKHIL G THAKER -
Petitioner(s)

Versus

DEPUTY COLLECTOR STAMP DUTY & ASSESSEMENT & 1 -
Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,
MS KIRAN PANDEY, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/04/2007

ORAL JUDGMENT

The petitioner is aggrieved by the intimation received by him

dated 4/5/2006 calling upon him to pay deficit stamp duty of Rs.4,04,105/-. The petitioner purchased property on 17/12/2005 from Gujarat State Financial Corporation [GSFC] in an auction of M/s. Deep Potteries Pvt. Ltd. The properties were put to auction by the GSFC in accordance with section 29 of the Gujarat State Financial Corporations Act [hereinafter referred to as 'the Act']. Thereafter, sale-deed was executed by the GSFC In favour of the petitioner on 27/4/2006. The petitioner paid stamp duty on the said sale-deed of Rs.2,75,520/- since the value of the property was Rs.51 lacs. Subsequently the Sub-Registrar, Kalol by aforesaid intimation called upon the petitioner to pay the deficit stamp duty of Rs.4,04,105/- since in its opinion the price shown in the sale-deed, Rs.46,26,000/- was less than the prevailing market price of such property. According to the respondent, it was Rs.1,14,22,165/- and the petitioner was required to pay stamp duty of Rs.6,79,625/-. The petitioner was also intimated that if within 30 days from the date of receipt, the amount of deficit stamp duty was not paid, the document of sale-deed before its registration would be sent to the Collector, Stamp Duty at Gandhinagar for determining the real market price and the appropriate duty.

1.1. It appears that the petitioner complied with the notice and paid the deficit stamp duty on 16/5/2006. Copy of the receipt of such payment is also annexed to the petition.

1.2. On 7/10/2006 the petitioner addressed a letter-cum-representation to the Sub-Registrar, Kalol seeking refund of the amount on the ground that

since the property was purchased from auction sale held by the GSFC under the provision of section 29 of the Act, the value of property was properly determined and it is the correct value of the said property.

2. Mr. KU Vyas, learned advocate appearing from Mr. PK Jani for the petitioner has submitted that when the property is purchased in auction sale from the GSFC, there is no question of under valuation of the property. According to him, the Corporation is a statutory body and it will always show correct price in the sale-deed. He has placed reliance on two decisions of this Court. One is rendered in the case of Patel Precision v/s. State of Gujarat dated 27/10/2005 in Special Civil Application No. 17916 of 2003 and the second is rendered in Special Civil Application No. 3926 of 2006 and its allied petitions in the case of Vandanaben Dipakbhai Rana v/s. State of Gujarat through Secretary and others which is dated 13/9/2006. It is submitted by him that both these decisions have been rendered in the similar circumstances and this Court has held that the valuation reflected in the sale-deed cannot be doubted and it would reflect the correct value of the concerned property. He has, therefore, submitted that this petition deserves to be granted. He has also made a grievance that the representation made to the Sub-Registrar, Kalol is yet not decided.

2.1. As against that, Ms. Kiran Pandey, Ld. AGP for the respondent has vehemently submitted that having paid the deficit stamp duty and having obtained the relevant documents, the petitioner now cannot be permitted to

raise such dispute. According to her, the ratio laid down in the decisions referred to by the learned advocate for the petitioner will not apply to the facts of the case. She has further submitted that the petitioner has filed this petition in a hot haste without waiting of the outcome of the representation that has been made to the Sub-Registrar, Kalol. She has, therefore, submitted that this petition be dismissed.

3. Having carefully considered the rival submissions as well as the record of this petition, it clearly appears that the issue agitated before this Court is under active consideration of the Sub-Registrar, Kalol since the representation made by the petitioner requesting for the refund of the amount is still not decided. Ms. Pandey has submitted, on instructions of the officer present in the Court, that if the petitioner wants to be heard personally, such hearing can be granted to him.

4. In view of the fact that the representation dated 7/10/2006 is pending for consideration of the concerned authority and when the controversy is open at large before the said officer, it is desirable that the petitioner should first exhaust that remedy. Indeed it is the grievance of the petitioner that it is almost 8 months the representation is made, but it is still not decided. In view of the same, the following direction can serve the purpose of the petitioner :

- I. The Sub-Registrar, Kalol is directed to decide the representation of the petitioner as early as possible and in any case not later than 30th June, 2007.

II. He will fix the hearing of the representation and intimate the date of hearing to the petitioner at-least one week in advance to enable the petitioner to remain present and defend his interest.

III. The petitioner shall be at liberty to produce and rely on all the relevant documents including the decisions of this Court referred to above and the Sub-Registrar, Kalol, while deciding the issue, will take them into consideration and pass appropriate order in accordance with law. He will be at liberty to consider the judgments and to determine whether the same are applicable to the facts of this case.

With aforesaid directions, the petition stands disposed of. Rule discharged with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.